

1990, at *203 (E.D. Pa. Feb. 5 2004) (quoting *Marroquin-Manriquez v. Immigration and Naturalization Serv.*, 699 F.2d 129, 134 (3d Cir. 1983)). Pursuant to Federal Rule of Civil Procedure 30(a)(1), “A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court.” Furthermore, pursuant to Federal Rule of Civil Procedure 30(b)(1), the party desiring to take the deposition may designate the time and the place for such deposition. Pursuant to Federal Rules 37(d), the Court is authorized to enter an Order compelling the depositions of any party, or officer of a party, who fails to appear at their deposition. Rule 37 “authorizes a party who has received evasive or incomplete answers to discovery authorized by ... Rule 26(a) to bring a motion to compel disclosure of materials sought.” *Northern v. City of Phila.*, Civ. A. No. 98-6517, 2000 U.S. Dist. LEXIS 4279, at *3 (E.D. Pa. April 4, 2000).

III. Argument

As the deposition testimony of Kathy Holtzman, Barbara Davidson, Kieran Hussey, Faith Balsama and Debbie Shelmire is crucial to Plaintiff’s case, and because Plaintiff acted diligently to obtain such testimony within the discovery deadline, this Court should enter an Order compelling the depositions of the witnesses.

Fed.R.Civ.P. 37 provides, in pertinent part, as follows:

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) *to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, . . .* the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure

under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Fed.R.Civ.P. 37(d) (emphasis added). In this matter, Plaintiff scheduled the depositions within the Court's discovery deadline, but Defendant would not appear and did not provide any dates on which the witnesses would appear. Such conduct clearly warrants the entry of an Order compelling the witnesses' testimony.

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that her Motion to Compel Depositions be granted.

Respectfully submitted,

TIMOTHY M. KOLMAN AND ASSOCIATES

By: /s/ Rufus A. Jennings
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November 16, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

Honorable Stewart Dalzell, J.

ATTORNEY CERTIFICATION OF GOOD FAITH

The undersigned counsel for Movant hereby certifies and attests that:

(a) He has had the contacts described below with Opposing Counsel regarding the discovery matter contained in the foregoing discovery Motion in an effort to resolve the specific discovery dispute at issue and further, that despite all counsel's good faith attempts to resolve the dispute, counsel have been unable to do so.

(b) Following the deposition of Plaintiff, Andrea Fiorentino, a paralegal in my office, contacted Defendant's counsel to schedule the depositions of a number of Defendant's employees. When counsel did not provide any dates on which the witnesses would appear, these depositions were unilaterally scheduled for November 15, 2007. Defendant's counsel wrote to advise that she would be unable to appear on that date, and did not provide any additional dates on which the depositions could take place. Plaintiff then moved for an extension of discovery in order to complete the depositions, which motion was denied.

CERTIFIED TO THE COURT:

Rufus A. Jennings
Rufus A. Jennings, Esquire
Attorney for Plaintiff

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CERTIFICATION OF SERVICE

I, Rufus A. Jennings, Esquire, hereby certify that, on the date set forth below, I did cause a true and correct copy of Plaintiff's Motion to Compel Depositions to be served on the following individual via electronic delivery:

Bebe H. Kivitz, Esquire
Troiani/Kivitz, LLP
38 North Waterloo Road
Devon, PA 19333

/s/ Rufus A. Jennings

Rufus A. Jennings, Esquire

November 16, 2007